MONTANA LEGISLATIVE HISTORY

Chapter 458 19 93

Bill H _____ S 256 Original bill & history ✓ C

H. Committee on	Labor + Employment Relations		S. Committee on	Labor + Employment Relations	
Hearing Date(s)	Mar 04	✓ C	Hearing Date(s)	Feb 09	✓ C
	3-11	C			C
		C			C
		C			C
Date Out	3-16	C	Date Out	Feb 9	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

House minutes 3-16-93: indicates it was "merged with HB 296 & passed in House Labor" — the Law Library has no minutes regarding this. According to the History & Final Status, HB 296 was Tabled in Senate Labor + Employment Committee on 3-10-93.

4/21	3RD READING FAILED	41	55

SB 256 INTRODUCED BY SWYSGOOD

DEFINE NONRESIDENT EMPLOYEE OR WORKER IN THIS STATE FOR WORKERS' COMPENSATION PURPOSES

1/26	INTRODUCED		
1/26	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/26	FIRST READING		
2/09	HEARING		
2/10	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	49	0
2/12	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/23	FIRST READING		
3/04	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	94	1
3/30	3RD READING CONCURRED	100	0
	RETURNED TO SENATE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS CONCURRED	50	0
4/06	3RD READING AMENDMENTS CONCURRED	50	0
4/13	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 458		
	EFFECTIVE DATE: 04/21/93		

SB 257 INTRODUCED BY HARP, ET AL.

INCREASE GAS AND FUEL TAX BY 4 CENTS PER GALLON IN 1993, AND 3 CENTS IN 1994

1/26	INTRODUCED		
1/26	REFERRED TO TAXATION		
1/26	FIRST READING		
1/26	FISCAL NOTE REQUESTED		
2/02	FISCAL NOTE RECEIVED		
2/03	FISCAL NOTE PRINTED		
2/19	HEARING		
3/27	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/27	REVISED FISCAL NOTE REQUESTED		
3/27	REVISED FISCAL NOTE RECEIVED		
3/29	REVISED FISCAL NOTE PRINTED		
3/29	2ND READING PASSED	36	12
3/30	3RD READING PASSED	34	16
	TRANSMITTED TO HOUSE		
3/31	REFERRED TO TAXATION		
3/31	FIRST READING		
4/06	HEARING		
4/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/12	2ND READING CONCUR AS AMENDED		
	MOTION FAILED	41	56
4/12	RECONSIDERED PREVIOUS ACTION	76	22
4/12	2ND READING CONCURRED AS AMENDED	57	42
4/13	3RD READING CONCURRED	54	44
	RETURNED TO SENATE WITH AMENDMENTS		
	(NOTE: HOUSE 2ND READING AMENDMENTS		
	NULLIFIED HOUSE COMMITTEE AMENDMENTS,		

Senate BILL NO. 256

INTRODUCED BY Swysgood

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING A NONRESIDENT DRIVER WHO IS DISPATCHED FROM THIS STATE AND WHO WORKS FOR A MOTOR CARRIER BASED IN THIS STATE AS AN "EMPLOYEE OR WORKER IN THIS STATE"; AND AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-117, MCA, is amended to read:

"39-71-117. **Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the

department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

SB 256
INTRODUCED BILL

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) Notwithstanding the provisions of subsection (3), ~~a~~ an interstate or intrastate common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 2. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, workman~~,~~ and volunteer firefighter defined. (1) The ~~terms~~ term "employee"~~,~~ "workman"~~,~~ or "worker" mean means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service

of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for ~~such~~ the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as

1 outlined above in this subsection while they are on the
2 premises of a public school or community college.
3 (d) students enrolled and in attendance in programs of
4 vocational-technical education at designated
5 vocational-technical centers;
6 (e) an airman or other person employed as a volunteer
7 under 67-2-105; or
8 (f) a person, other than a juvenile as defined in
9 subsection (1)(b), performing community service for a
10 nonprofit organization or association or for a federal,
11 state, or local government entity under a court order, or an
12 order from a hearings officer as a result of a probation or
13 parole violation, whether or not under appointment or
14 contract of hire with an employer as defined in this chapter
15 and whether or not receiving payment from a third party. For
16 a person covered by the definition in this subsection (f):
17 (i) compensation benefits must be limited to medical
18 expenses pursuant to 39-71-704 and an impairment award
19 pursuant to 39-71-703 that is based upon the minimum wage
20 established under Title 39, chapter 3, part 4, for a
21 full-time employee at the time of the injury; and
22 (ii) premiums must be paid by the employer, as defined
23 in 39-71-117(3), and must be based upon the minimum wage
24 established under Title 39, chapter 3, part 4, for the
25 number of hours of community service required under the

1 order from the court or hearings officer.
2 (2) The term "volunteer firefighter" means a
3 firefighter who is an enrolled and active member of a fire
4 company organized and funded by a county, a rural fire
5 district, or a fire service area.
6 (3) (a) If the employer is a partnership or sole
7 proprietorship, such the employer may elect to include as an
8 employee within the provisions of this chapter any member of
9 such the partnership or the owner of the sole proprietorship
10 devoting full time to the partnership or proprietorship
11 business.
12 (b) In the event of such an election, the employer must
13 serve upon the employer's insurer written notice naming the
14 partners or sole proprietor to be covered and stating the
15 level of compensation coverage desired by electing the
16 amount of wages to be reported, subject to the limitations
17 in subsection (3)(d). A partner or sole proprietor is not
18 considered an employee within this chapter until such notice
19 has been given.
20 (c) A change in elected wages must be in writing and is
21 effective at the start of the next quarter following
22 notification.
23 (d) All weekly compensation benefits must be based on
24 the amount of elected wages, subject to the minimum and
25 maximum limitations of this subsection. For premium

ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(4) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 12.

(5) An employee~~, workman,~~ or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(6) For purposes of this section, an "employee~~,~~ workman~~,~~ or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state; ~~or~~

(b) a nonresident of Montana whose principal employment

duties are conducted within this state on a regular basis for an employer~~.~~; or

(c) a nonresident of Montana who is employed as a driver by an interstate common or contract motor carrier based in and doing business in this state, whose employment duties are controlled from Montana by the motor carrier, and who is dispatched from this state."

NEW SECTION. **Section 3.** Code commissioner instruction. Wherever the term "workman" appears in Title 39, chapter 71, or in legislation enacted by the 1993 legislature that is intended to be codified in Title 39, chapter 71, the code commissioner shall change the term to "worker" or delete the term and make appropriate changes in grammar.

-End-

SENATE BILLS STATUS SHEET

SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

BILL NUMBER	ENTERED COMMITTEE	CONSIDERED	OUT OF COMMITTEE	DP DO PASS	DNP DO NOT PASS	DPAA DO PASS AS AMENDED	DNPAA DO NOT PASS AS AMENDED
SB 15	1/9/93	1/26/93	1/26/93			1/26/93	
SB 33	1/4/93	1/5/93	1/19/93			1/19/93	
SB 62	1/4/93	1/14/93	TABLED				
SB 91	1/7/93	1/14/93 1/19/93	1/26/93			1/26/93	
SB 116	1/11/93	1/14/93	1/19/93	1/19/93			
SB 160	1/15/93	1/26/93	1/26/93			1/26/93	
SB 163	1/15/93	1/28/93	2/11/93			2/11/93	
SB 164	1/15/93	1/28/94	2/4/93			2/4/93	
SB 184	1/18/93	1/26/93	2/2/93			2/2/93	
SB 207	1/19/93	2/2/93	2/2/93			2/2/93	
SB 212	1/20/93	2/13/93	2/13/93		2/13/93		
SB 223	1/20/93	2/4/93	2/9/93			2/9/93	
SB 256	1/26/93	2/9/93	2/9/93			2/9/93	

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Sen. Tom Towe, on February 9, 1993, at 1:03 P.M.

ROLL CALL

Members Present:
Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Legislative Council
Patricia Brooke, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 256, SB 270
Executive Action: SB 270, SB 256, SB 223

HEARING ON SB 256

Opening Statement by Sponsor:
Sen. Charles Swysgood, Senate District 37, introduced SB 256. He informed the Committee SB 256 bill addresses a situation that occurred during the adoption of SB 383 in July of 1991 when defining an employee in terms of a resident or non-resident of Montana. The definition of a non-resident employee as interpreted by the State Fund resulted in the disallowing of non-resident drivers employees' workers' compensation coverage. Sen. Swysgood said prior to the change in law the coverage for the employees was allowed. Sen. Swysgood stated there will be an amendment offered by the Department of Labor and he is in agreement with the amendment.

Proponents' Testimony:
Mike Micone, Montana Motor Carriers' Association, distributed an

amendment to the Committee(Exhibit #1) and repeated the information that with the adoption of SB 383 in the 52nd Legislature, which defined an employee in the state as a resident or non-resident of the state, changes resulted in disallowing non-resident drivers' employees' workers' compensation coverage. Mr. Micone stated the risks of driving in the Montana are the same regardless of residence. Mr. Micone stated the Montana Motor Carriers' Association is asking the Committee to amend the law to cover non-residence drivers of Montana-based carriers. Mr. Micone submitted written testimony(Exhibit #2).

Jim Murphy, State Fund, stated the amendments submitted by the Montana Motor Carriers' Association allows for an election by the employer, rather than mandated. Secondly, the amendment goes beyond the trucking industry, to other types of industries with similar type problems with non-resident employees they may want to elect to cover under Montana insurance.

George Wood, Executive Secretary, Montana Self-Insurers' Association, rose in support of SB 256 and urged the Committee pass the bill.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:
Sen. Lynch asked Sen. Swysgood if non-resident employees pays a pro-rated amount in other states. Sen. Swysgood replied if a non-resident employee is employed by a Montana carrier, it is unclear if they have to pay premiums in two states. Sen. Swysgood said he would like to see them pay premiums in only one state.

Sen. Lynch asked if an injury which occurred in another state will be covered by the Montana plan. Sen. Swysgood replied the Montana carriers' coverage will apply to an injury in another state.

Sen. Aklestad asked Sen. Swysgood to insert an effective date of July 1. Sen. Swysgood apologized for the oversight and asked the Committee to consider inserting July 1 as the effective date.

Sen. Towe asked Mike Micone what is missing in the law right now that SB 256 is needed. Mr. Micone stated there is a new Section C which discusses a resident of Montana who does not meet the requirements of Section B of the law.

Sen. Towe clarified his understanding of the intent of SB 256 is

to attempt to reach those persons who might be a non-resident but controlled by a resident Montana company. He said the employee who resides outside of Montana, employed by a Montana company, can elect to be covered by Montana insurance. Mr. Micone affirmed this is the intent of SB 256.

Sen. Towe asked George Wood if there existed a void in the law that would allow employers to not elect coverage for employees. Mr. Wood responded SB 256 is not to make employers choose whether or not to elect coverage, but rather to elect that the benefits be Montana benefits.

Sen. Aklestad asked Jim Murphy what the fiscal impact will be. Mr. Murphy responded there will be very little fiscal impact because the employer will have to pay premiums in accordance with the amount of benefits to be paid.

Closing by Sponsor:
Sen. Swysgood closed the hearing by saying SB 256 will potentially bring in to Montana more insurance policies and industry. SB 256 does a good job at addressing a situation created in the last session.

HEARING ON SB 270

Opening Statement by Sponsor:
Sen. Keating, SD 44, Billings, explained the to Committee that SB 270 deals with the unemployment insurance administrative tax, commonly called the "admin tax." The admin tax is .1% of payroll for some and .05% of payroll for those without an experience rating. The tax has to be paid in conjunction with the unemployment insurance tax and goes into the Unemployment Insurance Trust Fund to used for paying unemployment benefits. The UI admin tax has been used to finance the Job Service program, employment relations, legal services and research safety and training. The Legislative Auditor determined the money was flowing into a federal special revenue account for which there was no authority for appropriations. The Legislative Auditor said, in order to have accepted accounting practices, the admin tax would have to flow into a state special revenue account and be kept separate from the federal special revenue account. SB 270 establishes the statutory appropriation into a state special revenue account. Sen. Keating said it is the intention of the legislation that any unused portion of the admin tax beyond a certain level of the fund balance should flow to the Unemployment Insurance Trust Fund. SB 270 gives direction to the Department of Labor, in conjunction with the Office of Budget and Planning, regarding the flow of money from the State Special Revenue Fund into the Unemployment Trust Fund. Sen. Keating said it permits the Legislature to make appropriations of the unused portion of the UI tax through the appropriations process. Sen. Keating said at the present time there is some question whether the Legislature can appropriate federal special revenue. SB 270 will straighten out the confusion.

Motion/Vote: Sen. Lynch moved SB 270 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 256

Motion/Vote: Sen. Lynch moved to AMEND SB 256(Exhibit #5, part 5). Motion CARRIED UNANIMOUSLY.

Motion/Vote: Sen. Lynch moved to AMEND SB 256(Exhibit #5, part 1-4). Motion CARRIED UNANIMOUSLY.

Motion/Vote: Sen. Lynch moved SB 256 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 223

Discussion: Eddye McClure explained the technical amendments submitted by Senator Bartlett(Exhibit #6, parts 1-3, 5-7).

Motion/Vote: Sen. Blaylock MOVED TO AMEND SB 223. The motion CARRIED UNANIMOUSLY.

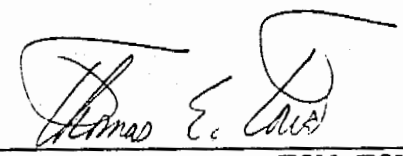
Discussion: Sen. Aklestad stated his concern about the language in SB 223 that refers to freight elevators. Chuck Hunter stated the Federal Code has extensive information about freight elevators and SB 223 could include a reference to the Federal Code. Sen. Towe stated language to amend SB 223 in reference to freight elevators(Exhibit #6, part 4).

Motion/Vote: Sen. Keating moved to AMEND SB 223(Exhibit #6, part 4). The motion CARRIED UNANIMOUSLY.

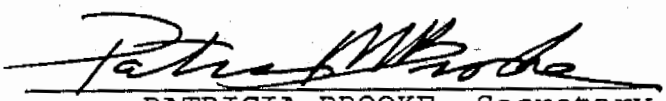
Motion/Vote: Sen. Keating moved SB 223 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 2:50 P.M.



TOM TOWE, Chair



PATRICIA BROOKE, Secretary

TET/pmb

ROLL CALL

SENATE COMMITTEE LABOR DATE 2/9/93

NAME	PRESENT	ABSENT	EXCUSED
Senator Aklestad	X		
Senator Keating	X		
Senator Blaylock	X		
Senator Lynch	X		
Senator Burnett	X		
Senator Wilson	X		
Senator Towe	X		

FC8

Attach to each day's minutes

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #1
DATE 2/9/93
BILL NO. SB 256

Proposed Amendments to Senate Bill 256
From the State Compensation Mutual Insurance Fund

1. Page 8, lines 3 through 7
Strike: subsection (c) in it's entirety
Insert: "(c) a non-resident of Montana who doesn't meet the requirements of 6 (b), if the employer elects coverage, the insurer allows such an election and the employer meets all the following :

i) the employees are hired in Montana;
ii) the wages are paid from Montana;
iii) the employees are supervised from Montana; and;
iiii) the business records are maintained in Montana.
A) An insurer may require coverage for all non-resident employees of a Montana employer that do not meet 6 (b) or 6 (c) as a condition of approving the election."

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #2
DATE 2/9/93
BILL NO. SB 256

TESTIMONY ON SB 256 BEFORE
THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE
FEBRUARY 9, 1993

PRESENTED BY:
MIKE MICONE
MONTANA MOTOR CARRIERS ASSOCIATION

Mr. Chairman and members of the committee. For the record, my name is Mike Micone, representing the Montana Motor Carriers Association. We are here today to ask for your concurrence of SB 256, an act that clarifies the definition of a nonresident driver and working for a Montana company.

The problem was created in the 1991 Legislature with the adoption of SB 383, defining an employee in this state as it applies to a resident and a nonresident of Montana. As interpreted by the State Fund, the definition of a nonresident employee resulted in disallowing nonresident driver employees Workers' Compensation coverage when previous to the change in the law coverage for these employees was allowed.

Many nonresident drivers of Montana carriers who drive in several states end up performing their principal work duties in Montana. The State Fund interpreted the law to mean a "majority" of a nonresident driver's time had to be spent in the state and disallowed claims on that basis.

The interstate common and contract motor carrier industry is a unique group of employers having both resident and non resident drivers operating in multiple states throughout the United States. The risks are the same regardless of residence and both types of employees are "controlled and employed by a Montana employer."

MMCA is asking the 1993 Legislature to amend the law to cover nonresident drivers of Montana based carriers. The key element in the amendment is on page 8, lines 3 through 7. It reads:

> (c) A nonresident of Montana who is employed as a driver by an interstate common or contract carrier based in and doing business in this state, whose employment duties area controlled from Montana by the motor carrier, and who is dispatched from this state.

The intent is that the nonresident driver will be similar to the conditions set out for a resident in the law, namely, "controlled within this state."

As a result of the State Fund interpretation of the law, MMCA surveyed carriers as to the number of nonresident drivers employed by their firms. Wages paid to some known 278 MMCA member nonresident drivers amounted to approximately $7 million per year based on an average of $25,000 per driver per year. The new current state fund rate is $26.26 per $100 of wages, for over-the-road drivers with towing units under classification 7219. The potential loss of premium based on the rate effective January 1, 1993 to the State Fund, now being paid by these employers, is estimated to be $1,838,200 annually.

SB 256 will ensure, not only that drivers working for Montana carriers have adequate coverage, but also that a significant premium continues to be received by the State Fund.

We urge your concurrence of SB 256.

EXHIBIT 5
DATE 2-9-93
SB 256

That such amendments read:

1. Title, lines 5 and 6.
Strike: "DRIVER" on line 5 through "STATE" on line 6

2. Title, line 7.
Following: "STATE";"
Insert: "PROVIDING FOR ELECTION OF COVERAGE FOR CERTAIN NONRESIDENTS;"
Strike: the first "AND"

3. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"

4. Page 8, lines 3 through 7.
Following: "(c)"
Strike: remainder of line 3 through "state" on line 7
Insert: "a nonresident of Montana who does not meet the requirements of subsection (6)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:
(i) nonresident employees are hired in Montana;
(ii) nonresident employees' wages are paid in Montana;
(iii) nonresident employees are supervised in Montana; and
(iv) business records are maintained in Montana.
(7) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (6)(b) or (6)(c) as a condition of approving the election under subsection (6)(c)"

5. Page 8, line 14.
Following: line 13
Insert: "NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 1993."

-END-

m- Amd. Coord.
Sec. of Senate

331121SC.Sma

DATE 2-9-93

SENATE COMMITTEE ON Labor Committee

BILLS BEING HEARD TODAY: SB 256

SB 270

Name	Representing	Bill No.	Check One Support	Oppose
Mike Micone	MTCA	256	X	
George Wood	MT Self Insurers Assn.	256	X	
Jerry Klein	SCMIF	~~#3~~		
Jim Murphy	State Fund	256	X	
Laurie Ekanger	Labor & Industry	270	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

SENATE STANDING COMMITTEE REPORT

February 10, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Seante Bill No. 256 (first reading copy -- white), respectfully report that Seante Bill No. 256 be amended as follows and as so amended do pass.

Signed: Thomas E. Towe
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, lines 5 and 6.
Strike: "DRIVER" on line 5 through "STATE" on line 6

2. Title, line 7.
Following: "STATE";"
Insert: "PROVIDING FOR ELECTION OF COVERAGE FOR CERTAIN NONRESIDENTS;"
Strike: the first "AND"

3. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"

4. Page 8, lines 3 through 7.
Following: "(c)"
Strike: remainder of line 3 through "state" on line 7
Insert: "a nonresident of Montana who does not meet the requirements of subsection (6)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:
(i) nonresident employees are hired in Montana;
(ii) nonresident employees' wages are paid in Montana;
(iii) nonresident employees are supervised in Montana; and
(iv) business records are maintained in Montana.
(7) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (6)(b) or (6)(c) as a condition of approving the election under subsection (6)(c)"

5. Page 8, line 14.
Following: line 13
Insert: "NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 1993."

-END-

m - Amd. Coord.
Sec. of Senate

331121SC.Sma

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0091	CHRISTIAENS, CHRIS 1/30	3/02	EXTEND WORKER'S COMPENSATION COVERAGE TO PRERELEASE, DIVERSIONARY PROGRAMS 3/4 DEFERRED	CONCUR AS AMENDED 3/11 VOTE: 16-0		3/16
SB0116	HARP, JOHN 1/23	2/04	EXCLUDING CERTAIN OUTSIDE SALESMEN FROM OVERTIME AND MINIMUM WAGE LAWS	CONCUR 2/4 VOTE: 16-0		2/10
SB0160	RYE, DAVID 1/30	3/02	PROHIBIT DISCRIMINATION FOR LAWFUL USE OF PRODUCT AWAY FROM WORK	CONCUR AS AMENDED 3/4 VOTE: 15-1		3/06
SB0163	HARP, JOHN 3/11	3/16	CREATE SAFETY CULTURE ACT REQUIRING EMPLOYERS ESTABLISH SAFETY PROGRAMS	CONCUR 3/18 VOTE: 15-1		3/20
SB0164	HARP, JOHN 3/11	3/16	CREATE FRAUD INVESTIGATION OFFICE IN DEPT OF JUSTICE & PREVENTION IN ST FUND	CONCUR 3/18 VOTE: 16-0		3/20
SB0184	BLAYLOCK, CHET 2/08	3/02	GENERALLY REVISE UNEMPLOYMENT INSURANCE LAWS	CONCUR AS AMENDED 3/4 VOTE: 16-0		3/06
SB0207	WILSON, WILLIAM 2/06	3/04	REVISE THE MONTANA WAGE PROTECTION LAWS	CONCUR 3/4 VOTE: 15-1		3/06
SB0223	BARTLETT, SUE 2/23	3/09	REVISE CHILD LABOR LAWS	CONCUR AS AMENDED 3/11 VOTE: 10-6		3/16
SB0256	SWYSGOOD, CHUCK 2/23	3/04	DEFINE NONRESIDENT EMPLOYEE OR WORKER IN THIS STATE FOR WORK COMP PURPOSES	CONCUR AS AMENDED 3/11 VOTE: 16-0		3/16
SB0270	KEATING, TOM 2/23	3/04	ESTABLISH EMPLOYMENT SECURITY ACCOUNT AND ALLOW FUND TRANSFERS	CONCUR 3/4 VOTE: 13-3		3/06
SB0329	KLAMPE, TERRY 3/01	3/09	REVISE PREVAILING WAGE ON PROJECTS FINANCED FROM BOND PROCEEDS AFTER 6/30/93	CONCUR AS AMENDED 3/11 VOTE: 9-7	LABOR & EMPLOYMENT	3/16
SB0329	KLAMPE, TERRY 3/19		REVISE PREVAILING WAGE ON PROJECTS FINANCED FROM BOND PROCEEDS AFTER 6/30/93	CONCUR AS AMENDED 3/11 VOTE: 9-7		3/22

SENATE BILL NO. 256

INTRODUCED BY SWYSGOOD

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING A NONRESIDENT ~~DRIVER WHO IS DISPATCHED FROM THIS STATE AND WHO WORKS FOR A MOTOR CARRIER BASED IN THIS STATE~~ AS AN "EMPLOYEE OR WORKER IN THIS STATE"; PROVIDING FOR ELECTION OF COVERAGE FOR CERTAIN NONRESIDENTS; AND AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all

phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) Notwithstanding the provisions of subsection (3), a an interstate or intrastate common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 2. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, workman, and volunteer firefighter defined. (1) The terms term "employee", "workman", or "worker" mean means:

(a) each person in this state, including a contractor

other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply

to students enrolled in vocational training programs as outlined above in this subsection while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an airman or other person employed as a volunteer under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the

number of hours of community service required under the order from the court or hearings officer.

(2) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(3) (a) If the employer is a partnership or sole proprietorship, such the employer may elect to include as an employee within the provisions of this chapter any member of such the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (3)(d). A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and

maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(4) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 12.

(5) An employee~~,workman,~~ or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(6) For purposes of this section, an "employee~~,~~ workman~~,~~ or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state; or

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer~~,~~; or

~~(c) a nonresident of Montana who is employed as a driver by an interstate common or contract motor carrier based in and doing business in this state, whose employment duties are controlled from Montana by the motor carrier, and who is dispatched from this state~~ A NONRESIDENT OF MONTANA WHO DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (6)(B) AND WHOSE EMPLOYER ELECTS COVERAGE WITH AN INSURER THAT ALLOWS AN ELECTION FOR AN EMPLOYER WHOSE:

(I) NONRESIDENT EMPLOYEES ARE HIRED IN MONTANA;

(II) NONRESIDENT EMPLOYEES' WAGES ARE PAID IN MONTANA;

(III) NONRESIDENT EMPLOYEES ARE SUPERVISED IN MONTANA; AND

(IV) BUSINESS RECORDS ARE MAINTAINED IN MONTANA.

(7) AN INSURER MAY REQUIRE COVERAGE FOR ALL NONRESIDENT EMPLOYEES OF A MONTANA EMPLOYER WHO DO NOT MEET THE REQUIREMENTS OF SUBSECTION (6)(B) OR (6)(C) AS A CONDITION OF APPROVING THE ELECTION UNDER SUBSECTION (6)(C)."

NEW SECTION. **Section 3.** Code commissioner instruction. Wherever the term "workman" appears in Title 39, chapter 71, or in legislation enacted by the 1993 legislature that is intended to be codified in Title 39, chapter 71, the code commissioner shall change the term to "worker" or delete the

1 term and make appropriate changes in grammar.

2 NEW SECTION. **SECTION 4.** EFFECTIVE DATE. [THIS ACT] IS

3 EFFECTIVE JULY 1, 1993.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Vice Chairman Gary Feland, on March 4, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)
Rep. Tim Whalen (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 207, SB 256 & SB 270
Executive Action: SB 160, SB 184, SB 270 & SB 207

HEARING ON SB 256

Opening Statement by Sponsor:

SEN. CHARLES SWYSGOOD, SD 37, Madison and Beaverhead Counties, sponsor, opened on SB 256 by addressing the situation that

occurred in the department regarding nonresident workers with workers' compensation. He stated that this bill is similar to SB 383 that passed in the last session. The definition of resident originally was put in for interstate drivers not covered by workers' compensation.

Proponents' Testimony:

Mike Micone, Montana Motor Carriers Association, referred to page 8, line 3 through 20 and stated that this section was intended to include employers in plan 1, 2, and 3. He distributed written testimony to the committee. **EXHIBIT #1**

Nancy Butler, General Councel for the State Fund, stated that her organization wants to be on the record in support of SB 256.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. GALVIN asked Mike Micone if these employees and employers pay taxes on income taxes in Montana?

Mike Micone responded that he is not an expert in that field. He then referred him to Mr. Capdeville. Mr. Capdeville stated that he could not answer the question either.

REP. MILLS asked Mr. Micone if this results in any added revenue brought into the State Fund and if so, how much?

Mr. Micone responded that now the State Fund endorses these policies. Nonresidents are covered until the end of June this year. He stated that there will be no added revenue, but there will not be a loss either.

REP. DRISCOLL asked Mr. Micone if other states require the driver to buy a policy in their state, what effect would this effect have on those drivers who are residents of Montana? Do they pay twice?

Mr. Micone replied that he currently does not know of any states that have this law, but if they did, the carrier would need to carry two policies.

REP. DRISCOLL asked **SEN. SWYSGOOD** if he would object to an amendment that would not allow Montana to make the individual be covered if they already had to be covered in another state.

SEN. SWYSGOOD replied that he does not believe that this will be a problem, because the these individuals are hired, paid and supervised in Montana.

Closing by Sponsor:

SEN. SWYSGOOD closed on SB 256.

HEARING ON SB 207

Opening Statement by Sponsor:

SEN. BILL WILSON, Senate District 19, Cascade, sponsor, opened on SB 207 by stating that this bill requires the Department of Labor to revise the Montana wage protection laws. He referred to page 2, line 23. This line changes the ceiling from 100 percent to 110 percent. This ceiling allows the Department of Labor to use their own discretion; furthermore, this would eliminate the decision by the sheriff department. This bill will provide a faster, simpler way for employers to pay their employees.

Proponents' Testimony:

John Andrew, Department of Labor, testified that in the past, employees and employers both brought problems to the department. This bill will allow service by mail which will expedite the claims method.

Darrell Holzer, Montana State AFL-CIO, testified that this bill is a positive step because it will allow the employees to get their money sooner. Mr. Holzer stated that his organization would like to be on record in support of SB 207.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. PAVLOVICH asked Mr. Andrews if the state of Washington has the same provision as this bill would provide for Montana?

Mr. Andrews replied that he believes they do.

REP. DRISCOLL asked Mr. Andrew to refer to section 2. He asked why there is no interest in amending five percent per day like it used to be?

Mr. Andrews replied that the penalty provision was changed. The language has changed the law to 110 percent.

REP. DRISCOLL asked Mr. Andrews which penalties have been collected since last session.

Mr. Andrews stated that the penalty goes to the employee.

REP. COCCHIARELLA asked Mr. Andrew to refer to the amendment on page 4, line 14. His concern is with the language. The language suggests that registered mail should be used. She asked if the sheriff's department was paid when they delivered the letters?

Mr. Andrew replied that the cost of registered mail is expensive.

HOUSE OF REPRESENTATIVES

LABOR COMMITTEE

ROLL CALL DATE 3/4/93

NAME	PRESENT	ABSENT	EXCUSED
REP. TOM NELSON, CHAIRMAN	✓		
REP. GARY FELAND, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. JERRY DRISCOLL	✓		
REP. ALVIN ELLIS	✓		
REP. PAT GALVIN	✓		
REP. SONNY HANSON	✓		
REP. NORM MILLS	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL TASH	✓		
REP. ROLPH TUNBY	✓		
REP. CARLEY TUSS	✓		
REP. TIM WHALEN	✓		

EXHIBIT 7
DATE 3/4/93
~~HB~~ SB 256

TESTIMONY ON SB 256 BEFORE
THE HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MARCH 4, 1993
MIKE MICONE, MONTANA MOTOR CARRIERS ASSOCIATION

Mr. Chairman. Members of the Committee. For the record I am Mike Micone, representing the Montana Motor Carriers Association. We are here today to ask for your concurrence of SB 256, an act that clarifies the definition of a nonresident driver and working for a Montana company.

The problem was created in the 1991 Legislature with the adoption of SB 383, defining an employee in this state as it applies to a resident and a nonresident of Montana. As interpreted by the State Fund, the definition of a nonresident employee resulted in disallowing nonresident driver employees Workers' Compensation coverage when previous to the change in the law coverage for these employees was allowed.

Many nonresident drivers of Montana carriers who drive in several states end up performing their principal work duties in Montana. The State Fund interpreted the law to mean a "majority" of a nonresident driver's time had to be spent in the state and disallowed claims on that basis.

The interstate common and contract motor carrier industry is a unique group of employers having both resident and non resident drivers operating in multiple states throughout the United States. The risks are the same regardless of residence and both types of employees are"controlled and employed by a Montana employer."

MMCA is asking the 1993 Legislature to amend the law to cover nonresident drivers of Montana based carriers. The key element in the amendment is on page 8, lines, 3 through 20. The intent is that the nonresident driver will be similar to the conditions set out for a resident in the law, namely, "controlled within this state."

As a result of the State Fund interpretation of the law, MMCA surveyed carriers as to the number of nonresident drivers employed by their firms. Wages paid to some known 278 MMCA member nonresident drivers amounted to approximately $7 million per year based on an average of $25,000 per driver per year. The new current state fund rate is $26.26 per $100 of wages, for over-the-road drivers with towing units under classification 7219. The potential loss of premium based on the rate effective January 1, 1993 to the State Fund, now being paid by these employers, is estimated to be $1,838,200 annually.

SB 256 will ensure, not only that drivers working for Montana carriers have adequate coverage, but also that a significant premium continues to be received by the State Fund.

We urge your concurrence of SB 256.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Nelson, on March 11, 1993, at 3:05

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)
Rep. Tim Whalen (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: None
Executive Action: SB 91, SB 381, SB 329, SB 223, SB 256, SB 342

EXECUTIVE ACTION ON SB 91

Motion: **REP. SIMON MOVED SB 91 DO BE CONCURRED IN. REP. SIMON MOVED TO AMEND.**

Discussion: **REP. TUSS** asked **REP. SIMON** if diversionary program is defined anywhere?

REP. SIMON told her that he does not know if it is defined in

Chuck Hunter, with the permission of the committee, suggested a wording change that would solve the freight elevator problem.

REP. MILLS called for the question on his amendments. A voice vote was taken. The motion to DO PASS **CARRIED** unanimously.

Motion/Vote: **REP. DRISCOLL MOVED SB 223 DO BE CONCURRED IN AS AMENDED.** The question was called for. A voice vote was taken. the Motion **CARRIED** 10 to 6 with **REP. TUNBY, REP. ELLIS, REP. HANSON, REP. MILLS, REP. BENEDICT AND REP. TASH** voting no. **REP. RICE** will carry SB 223 on the House Floor.

EXECUTIVE ACTION ON SB 256

Motion: **REP. FELAND MOVED SB 256 DO BE CONCURRED IN.**

Discussion: **REP. DRISCOLL** explained the McClure amendments, dated March 9, 1993, to the committee. **REP. DRISCOLL MOVED THE MCCLURE AMENDMENT.** The question was called for. A voice vote was taken. The motion to DO PASS **CARRIED** 15 to 1 with **REP. HANSON** voting no.

REP. SIMON explained his proposed amendments to the committee. He stated that he wants to amend the effective date from "July 1, 1993" to "upon passage". Furthermore, those who bought prior to the passage of this bill will be grandfathered. The question was called for. A voice vote was taken. The motion to DO PASS **CARRIED** unanimously.

REP. DRISCOLL explained the Rice amendments to the committee.

REP. GALVIN stated that he knows a person in Great Falls who would be effected positively by the passage of this bill.

REP. COCCHIARELLA stated that each year in Missoula, out-of-state yard workers go door to door and landscape yards without paying in Montana.

REP. BENEDICT stated that radio competitors come from Idaho and don't have to pay in Montana.

The question was called for on the Rice amendments. The motion to DO PASS **FAILED** with a tie vote.

Motion/Vote: **REP. DRISCOLL MOVED SB 256 BE CONCURRED IN AS AMENDED.** The question was called for. The motion **CARRIED** unanimously. **REP. DRISCOLL** will carry SB 256 on the House floor.

EXECUTIVE ACTION ON SB 342

Motion: **REP. MILLS MOVED SB 342 BE CONCURRED IN.**

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LAB COMMITTEE BILL NO. SB 756

DATE 3/[illegible] SPONSOR(S) SYS[illegible]

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John L. King	State Fund	X	
Nancy Butler	" "	X	
Mike Micone	MMCA	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker: We, the committee on Labor report that Senate Bill 256 (third reading copy -- blue) be concurred in as amended.

Signed: Tom Nelson, Chair

And, that such amendments read: Carried by: Rep. Driscoll

1. Title, line 8.
Following: "NONRESIDENTS;"
Insert: "REQUIRING OUT-OF-STATE EMPLOYERS ENGAGED IN THE CONSTRUCTION INDUSTRY TO OBTAIN WORKERS' COMPENSATION COVERAGE FOR THEIR OUT-OF-STATE EMPLOYEES UNDER THE PROVISIONS OF MONTANA LAW;"
Following: "39-71-117"
Strike: "AND"
Insert: ","

2. Title, line 9.
Following: "39-71-118,"
Insert: "AND 39-71-402,"
Following: "AN"
Insert: "IMMEDIATE"

3. Page 8, line 3.
Strike: "or"
Insert: "(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or"
Renumber: subsequent subsection

4. Page 8, lines 19 and 20.
Strike: "(6)(C)"
Insert: "(6)(d)"

5. Page 8, line 21.
Following: line 20
Insert: "Section 3. Section 39-71-402, MCA, is amended to read:
"39-71-402. Extraterritorial application and reciprocity -- exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state

Committee Vote:
Yes 16, No 0.

561645SC.Hss

incidental to that employment and receives an injury arising out of and in the course of ~~such~~ employment, the provisions of this chapter ~~shall~~ apply to ~~such~~ the worker as though ~~he~~ the worker were injured within this state.

(2) ~~If~~ Except as provided in subsection (5), if a worker from another state and ~~his~~ the worker's employer from another state are temporarily engaged in work within this state, this chapter ~~shall~~ does not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of ~~such~~ the other state ~~which~~ that applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in ~~such~~ the other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of ~~such~~ the other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana ~~shall be~~ is prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) ~~The provisions of this section do not apply to the construction industry as defined in 39-71-116.~~ Employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers from another state shall obtain coverage for those workers under the provisions of this chapter.""
Renumber: subsequent sections

6. Page 9, line 2.
Following: line 1
Insert: "
NEW SECTION. Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."
Renumber: subsequent section

7. Page 9, line 3.
Strike: "JULY 1, 1993"

SB 256

HOUSE

Insert: "on passage and approval"

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Tom Nelson, on March 16, 1993, at 3:00 p.m.

ROLL CALL

Members Present:
Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)
Rep. Tim Whalen (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 361, HB 622, SB 347, HB 628, SB 163, SB 164, HB 453, SB 394, HB 504, HB 13, HB 511 & HB 587
Executive Action: None

PACKAGE OF BILLS FROM THE SELECT COMMITTEE ON WORKERS COMP

Opening Statement by Sponsor:

REP. CHASE HIBBARD, HD 46, Lewis and Clark County, sponsor,

HOUSE OF REPRESENTATIVES

LABOR COMMITTEE

ROLL CALL **DATE** 3/16/93

NAME	PRESENT	ABSENT	EXCUSED
REP. TOM NELSON, CHAIRMAN	✓		
REP. GARY FELAND, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. JERRY DRISCOLL	✓		
REP. ALVIN ELLIS	✓		
REP. PAT GALVIN	✓		
REP. SONNY HANSON	✓		
REP. NORM MILLS	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL TASH	✓		
REP. ROLPH TUNBY	✓		
REP. CARLEY TUSS	✓		
REP. TIM WHALEN	✓		

DATE 3/16/93
HB
WC Package

WORKERS COMPENSATION PACKAGE
OUTLINE

I MAJOR AREAS OF REFORM

A. MODIFYING OR RESTRICTING ACCESS TO BENEFITS
1. HB 361 HIBBARD
2. HB 622 EWER (PARTS)

B. MEDICAL COST CONTAINMENT
1. SB 347 HARP
2. HB 628 TOOLE

C. SAFETY
1. SB 163 HARP

D. FRAUD
1. SB 164 HARP
2. HB 453 MOLNAR
3. HB 622 EWER (AMENDMENTS)

E. ATTORNEY FEES
1. SB 394 HARP

II OLD FUND PROBLEM

A. PAYING FOR THE UNFUNDED LIABILITY ($400 -426 MM)
1. HB 504 BENEDICT .05% PAYROLL TAX

III NEW FUND MANAGEMENT AND BOARD

A. HB 13 BENEDICT
B. HB 622 (AMENDMENTS)

IV SYSTEM IN GENERAL

A. HB 511 HIBBARD
B. HB 587 HARPER
C. HB 622 EWER (PARTS)

V BILLS SIGNIFICANT BUT NOT PART OF THE PACKAGE

A. HB 470 DRISCOLL - INDEPENDENT CONTRACTORS
SCHEDULED HEARING TUESDAY AT 3:00 PM IN SENATE LABOR - ALREADY PASSED HOUSE LABOR

THIS BILL REQUIRES ALL INDEPENDENT CONTRACTORS IN THE CONSTRUCTION INDUSTRY TO PURCHASE WORKER'S COMPENSATION COVERAGE, AND THEY ARE NOT ALLOWED TO EXEMPT THEMSELVES FROM COVERAGE.

ALSO PROVIDES THAT THE DEPARTMENT OF LABOR WILL PURSUE REPORTS OF UNINSURED INDEPENDENT CONTRACTORS.

B. HB 487 BRANDEWIE - CONSTITUTIONAL AMENDMENT

THIS BILL PROVIDES FOR A CONSTITUTIONAL AMENDMENT TO BE PLACED ON THE BALLOT. IT ASSERTS CONSTITUTIONALLY THE RIGHT OF THE LEGISLATURE TO ESTABLISH ELIGIBILITY FOR WORKER'S COMPENSATION BENEFITS AND SET LIMITS ON BENEFITS.

C. SB 381 FORRESTER - PENALIZE EMPLOYER FOR MIS-CLASSIFICATION

D. HB 296 DRISCOLL - RECIPROCITY BILL

THIS BILL PROVIDES THAT EMPLOYERS IN THE CONSTRUCTION INDUSTRY THAT WORK IN MONTANA, MUST PURCHASE MONTANA COVERAGE ON ALL EMPLOYEES. MONTANA WILL NO LONGER RECOGNIZE OUT-OF-STATE COVERAGE FOR NON-RESIDENTS FOR THE CONSTRUCTION INDUSTRY.

THIS BILL PUTS OUR MONTANA CONSTRUCTION INDUSTRY EMPLOYERS ON AN EQUAL FOOTING WITH OUT-OF-STATE EMPLOYERS WHO MAY BE PAYING CHEAPER WORKER'S COMPENSATION RATES.

E. SB 256 SWYSGOOD - NON RESIDENT COVERAGE (MERGED WITH HB 296 AND PASSED HOUSE LABOR) - ALLOW MONTANA EMPLOYERS WHO HAVE NON-RESIDENTS WHO DO NOT WORK IN MONTANA, SUCH AS IN THE INTERSTATE TRUCKING INDUSTRY, THE OPPORTUNITY TO ELECT COVERAGE FOR THOSE NON-RESIDENTS.

THIS PROVISION HELPS OUT OUR MONTANA BASED EMPLOYERS WHO HAVE EMPLOYEES ACROSS THE UNITED STATES.

F. HB 259 - SCHWINDEN (PASSED HOUSE -3RD READING-SENATE - 3/12/93)

THIS BILL STATES THAT A WORKER IS NOT CONSIDERED AN EMPLOYEE WHILE PARTICIPATING IN RECREATIONAL ACTIVITY <u>AND</u> ALSO NOT PERFORMING WORK DUTIES, IF USING A PASS, PERMIT OR OTHER EMPLOYER PROVIDED BENEFIT.

<u>OR</u> IS PERFORMING VOLUNTARY SERVICE AT A RECREATIONAL FACILITY AND IS GETTING NO COMPENSATION OTHER THAN MEALS, LODGING OR USE OF RECREATIONAL FACILITIES.

SB 0256/03

SENATE BILL NO. 256

INTRODUCED BY SWYSGOOD

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING A NONRESIDENT ~~DRIVER WHO IS DISPATCHED FROM THIS STATE AND WHO WORKS FOR A MOTOR-CARRIER BASED IN THIS STATE~~ AS AN "EMPLOYEE OR WORKER IN THIS STATE"; PROVIDING FOR ELECTION OF COVERAGE FOR CERTAIN NONRESIDENTS; REQUIRING OUT-OF-STATE EMPLOYERS ENGAGED IN THE CONSTRUCTION INDUSTRY TO OBTAIN WORKERS' COMPENSATION COVERAGE FOR THEIR OUT-OF STATE EMPLOYEES UNDER THE PROVISIONS OF MONTANA LAW; ~~AND~~ AMENDING SECTIONS 39-71-117 ~~AND~~, 39-71-118, AND 39-71-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or

corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) Notwithstanding the provisions of subsection (3), a an interstate or intrastate common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 2. Section 39-71-118, MCA, is amended to read:

"39-71-118. **Employee, worker, workman, and volunteer firefighter defined.** (1) The ~~terms~~ term "employee", ~~"workman",~~ or "worker" ~~mean~~ means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for ~~such~~ the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a

state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above in this subsection while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an airman or other person employed as a volunteer under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a

full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(2) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(3) (a) If the employer is a partnership or sole proprietorship, such the employer may elect to include as an employee within the provisions of this chapter any member of such the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (3)(d). A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is

effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(4) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 12.

(5) An employee~~,workman~~, or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(6) For purposes of this section, an "employee~~,~~ workman~~,~~ or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state; ~~or~~

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer~~.~~; or

(C) A NONRESIDENT EMPLOYEE OF AN EMPLOYER FROM ANOTHER STATE ENGAGED IN THE CONSTRUCTION INDUSTRY, AS DEFINED IN 39-71-116, WITHIN THIS STATE; OR

~~(c)~~(D) ~~a nonresident of Montana who is employed as a driver by an interstate common or contract motor carrier based in and doing business in this state, whose employment duties are controlled from Montana by the motor carrier, and who is dispatched from this state~~ A NONRESIDENT OF MONTANA WHO DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (6)(B) AND WHOSE EMPLOYER ELECTS COVERAGE WITH AN INSURER THAT ALLOWS AN ELECTION FOR AN EMPLOYER WHOSE:

(I) NONRESIDENT EMPLOYEES ARE HIRED IN MONTANA;

(II) NONRESIDENT EMPLOYEES' WAGES ARE PAID IN MONTANA;

(III) NONRESIDENT EMPLOYEES ARE SUPERVISED IN MONTANA; AND

(IV) BUSINESS RECORDS ARE MAINTAINED IN MONTANA.

(7) AN INSURER MAY REQUIRE COVERAGE FOR ALL NONRESIDENT EMPLOYEES OF A MONTANA EMPLOYER WHO DO NOT MEET THE

REQUIREMENTS OF SUBSECTION (6)(B) OR ~~(6)(C)~~ (6)(D) AS A CONDITION OF APPROVING THE ELECTION UNDER SUBSECTION ~~(6)(C)~~ (6)(D)."

SECTION 3. SECTION 39-71-402, MCA, IS AMENDED TO READ:

"39-71-402. Extraterritorial application and reciprocity -- exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of ~~such~~ employment, the provisions of this chapter ~~shall~~ apply to ~~such~~ the worker as though ~~he~~ the worker were injured within this state.

(2) ~~If~~ Except as provided in subsection (5), if a worker from another state and ~~his~~ the worker's employer from another state are temporarily engaged in work within this state, this chapter ~~shall~~ does not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of ~~such~~ the other state ~~which~~ that applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in ~~such~~ the other state.

(3) A certificate from an authorized officer of the

workers' compensation department or similar agency of another state certifying that an employer of ~~such~~ the other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana ~~shall be~~ is prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) ~~The provisions of this section do not apply to the construction industry as defined in 39-71-116.~~ Employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers from another state shall obtain coverage for those workers under the provisions of this chapter."

NEW SECTION. **Section 4. Code commissioner instruction.** Wherever the term "workman" appears in Title 39, chapter 71, or in legislation enacted by the 1993 legislature that is intended to be codified in Title 39, chapter 71, the code commissioner shall change the term to "worker" or delete the term and make appropriate changes in grammar.

1 NEW SECTION. **SECTION 5.** SAVING CLAUSE. [THIS ACT] DOES
2 NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT
3 WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE
4 EFFECTIVE DATE OF THIS ACT].
5 NEW SECTION. **SECTION 6.** EFFECTIVE DATE. [THIS ACT] IS
6 EFFECTIVE ~~JULY 1, 1993~~ ON PASSAGE AND APPROVAL.

-End-